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Comments of Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company and Commonwealth Gas Company on distribution service territories (Section V)

V. APPLICATION OF EVALUATION CRITERIA TO DISTRIBUTION SERVICE TERRITORIES

As with the provision of MBIS, maintaining exclusive service territories for distribution service also meets the regulatory and public-policy standards relating to cost, service quality and reliability. Indeed, the benefits of exclusive service territories are supported by the fact that an integral component of the provision of electricity in the Commonwealth has been the recognition by government of the public utility's exclusive retail franchise, (1) to be exercised on behalf of the public good, free from retail competition. See *Commonwealth Electric Company v. Department of Public Utilities*, 397 Mass. 361, 368-369, 491 N.E.2d 1035, 1039 (1986), cert. denied, 481 U.S. 1036 (1986). The exclusive distribution franchise of electric utilities is recognized by various provisions of the General Laws (see, e.g., G.L.c. 164, §§ 21, 30, 70-76C, and 86-91), and decisions of the Massachusetts Supreme Judicial Court (the "Court"). (2)

When addressing this subject, the Court has described the interdependence of public utility monopoly status, franchise rights, and the duty to exercise those rights on behalf of the public:

A public service or quasi public corporation [public utility] is one private in its ownership but having an appropriate franchise from the state to provide for a necessity or convenience of the general public incapable of being furnished through the ordinary channels of private competitive business and dependent for its exercise upon eminent domain or some other agency of government.

Haverhill, 215 Mass. at 398. The nature of this franchise is the "right to manufacture and supply [electricity] for a particular locality and to exercise special rights and privileges in the streets and elsewhere which are essential to the proper performance of its public duty and the gain of its private emoluments [i.e., profits] and without which it could not exist successfully." *Haverhill*, 215 Mass. at 399; see also *Boston Real Estate Board v. Department of Public Utilities*, 334 Mass. 488, 491, 136 N.E.2d 243 (1928); *Roberto v. Commissioners of Department of Public Utilities*, 262 Mass. 583, 160 N.E. 321 (1928); *Town of Truro v. Department of Public Utilities*, 365 Mass. 407, 312 N.E.2d 566 (1974). In fact, a public utility cannot relieve itself of its franchise duties to the public so long as it retains its charter. *Haverhill*, 215 Mass. at 397-397.

The wisdom of the historical policies requiring the exclusivity of franchises and service territories is supported quantitatively by the cost analysis performed by Pacific Economics Group. This econometric analysis demonstrates the intuitively obvious fact that there exist economies of scale and scope in providing distribution service which makes such service a natural monopoly. Although it is self-evident that the duplication of distribution facilities will result in higher costs and intractable complications relating to operation of the bulk power system, the quantitative evidence provided in Appendix B provides the analytical support for the regulatory policy that has been in place for a century. (3)

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Further, exclusive service territories play a significant role in ensuring system reliability and service quality. In exchange for protection from competition through the franchise, distribution companies assume certain general obligations, including: (1) an obligation to serve within their service territory all who apply for service and are willing to pay for such service; (2) an obligation to provide safe, reliable and adequate power (i.e., utilities must be prepared to provide instantaneous service on demand); (3) an obligation to serve all tariffed customers within a specific class on equal terms; and (4) an obligation to provide "just and reasonable" prices. See, e.g., Charles F. Phillips, Jr., *The Regulation of Public Utilities*, (Public Utilities Reports, Inc., Arlington, Va., 1988), pp. 109-111. See *Weld*, 197 Mass. at 396-397; *Holyoke Water Power Company v. City of Holyoke*, 349 Mass. 442, 208 N.E.2d 801 (1965).

The obligation to serve has provided customers historically with the security that electricity will be available upon demand in a safe manner. This continued obligation to provide universal service to customers is threatened if distribution company service territories are not exclusive. If competitive distribution companies were allowed to serve in traditionally exclusive territories, regulated distribution companies will be required to cede their rights to serve customers within their service territory to unregulated companies that are under no obligation to provide universal service. Accordingly, if service territories are open to unregulated distribution companies, the Department's ability to enforce an obligation to serve on a competitive distribution provider would be seriously impeded, if not obliterated. (4)

Accordingly, the Department should maintain exclusive service territories for distribution companies as provided in the Act and supported by over 100 years of experience in the Commonwealth. The Legislature explicitly recognized these franchise rights and the benefits of exclusive service territories in the Act. G.L. c. 164, §1B(a) mandates that the Department define service territories for each electric company based on those service territories actually served on July 1, 1997, following municipal boundaries to the extent possible. Since the passage of the Act in 1997, the advent of competitive generation has not had any impact on the benefits provided by exclusive distribution service territories. Therefore, the Department should not propose any change to the legislative provisions relating to the exclusivity of service territories for each distribution company as set forth in G.L. c. 164, § 1B(a).

1.

1 Franchise territories in Massachusetts generally follow municipal boundaries. However, it should be noted that some minor border accommodations have been agreed to by electric companies to reflect natural boundaries and the historical development of transmission and distribution lines. These accommodations are necessary to avoid duplication of facilities and ensure that service is provided at the lowest possible cost.

2. 2 G.L. c. 164, § 21, prohibits any regulated utility from transferring its franchise or otherwise attempting to relieve itself from its duty to exercise its

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franchise for the public good without legislative authority. *Haverhill*, 215 Mass. at 399; *Weld*, 197 Mass. at 556-558. G.L. c. 164, § 30, directs that Department authority is necessary to allow a gas or electric company to expand their service franchises into other towns, subject to the rights of existing franchises in such towns. G.L. c. 164, §§ 70 through 76C deal with the rights of gas or electric companies, subject to Department mandate to ensure the public convenience and necessity, to open public streets, lay mains and wires, construct transmission lines, and exercise eminent domain as part of their franchise rights to meet their required provision of service. See, generally, *Comiskey v. Lynn*, 226 Mass. 210, 115 N.E. 312 (1917). G.L. c. 164, §§ 86 through 91, deal generally with the need for the consent of municipalities or towns to the entry of another utility company into an existing service territory. See, e.g., *Boston Real Estate Board v. Department of Public Utilities*, 334 Mass. 477, 136 N.E. 2d 243 (1956).

3.

3 In addition, under the Act, transition charges are non-bypassable at the distribution level to ensure that all customers pay their fair share of transition costs. See G.L. c. 164, §1G(b). Without non-bypassable transition cost charges and exclusive service territories, distribution companies would not be able to recover fully their transition costs. This clearly would violate the Act's provisions that allow distribution companies to receive the entirety of their Department-approved net, non-mitigable transition costs and would raise serious constitutional issues.

4.

4 Further, system reliability is integrally related to the performance of the electricity grid through ISO New England, Inc. ("ISO-New England"). It is impossible to know how multiple distribution systems in the same area provided by competitive suppliers would affect ISO-New England's ability to maintain system reliability.